



# Department of Justice

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## **JUSTICE DEPARTMENT MOVES TO STOP ILLEGAL BOYCOTT BY THE FEDERATION OF PHYSICIANS AND DENTISTS ON BEHALF OF DELAWARE ORTHOPEDIC SURGEONS**

WASHINGTON, D.C. -- The Department of Justice today moved to stop the Federation of Physicians and Dentists from illegally conducting a boycott aimed at artificially maintaining high fees for orthopedic medical services in Delaware.

The complaint, filed in U.S. District Court in Delaware, alleges that nearly all of the orthopedic surgeons in Delaware are members of the Federation, who have agreed to designate the Federation's executive director as their agent to negotiate the fee levels they would accept from Blue Cross & Blue Shield of Delaware ("Blue Cross"). When Blue Cross declined to deal with them, the Federation redoubled its efforts to persuade doctors to deal with Blue Cross only through the Federation, and ultimately organized all member orthopedists to terminate their contracts with Blue Cross.

"The Federation organized an illegal boycott designed to insulate doctors' fees from market forces and led the doctors well over the line into anticompetitive conduct," said Joel I. Klein, Assistant Attorney General in charge of the Antitrust Division. "We will take action to stop illegal boycotts that injure the public and ultimately increase the prices that consumers pay for health care."

The Federation, a national organization of physicians and dentists, operates elsewhere as a certified collective bargaining agent for doctors who work as employees of public hospitals and other entities. Today's complaint does not challenge any of those activities. In Delaware, however, the Federation has represented independent practitioners, for whom it can not lawfully serve as a collective bargaining representative. In representing those practitioners, the Federation allegedly functions as a "third party messenger." The complaint charges that in this case the Federation misused a "messenger" arrangement to facilitate illegal collusion by doctors to maintain high fee levels.

A "messenger" arrangement, when implemented with adequate safeguards, may aid in the transmission of information between health insurance plans and doctors and speed the negotiation process. It may not, however, legally be used to strengthen the bargaining power of those it serves.

“There is an ongoing public discussion about the role of managed care, and there are pending proposals to enact various reforms,” said Klein. “Physicians are free to participate fully in the discussion and to support or oppose those proposals. However, they, like all citizens, must comply with antitrust laws that protect consumers.”

The antitrust laws have long been applied to various professional groups, such as lawyers and doctors. In the case, *Federal Trade Commission v. Superior Court Trial Lawyers Association* (1990), the Supreme Court ruled that independent lawyers could not engage in a group boycott to extract higher fees. The antitrust laws prevent similar conduct by physicians.

In addition to the Federation’s representation of Delaware orthopedic surgeons, it has reportedly organized similar groups of independent physicians elsewhere. The Department’s investigation of the Federation’s activities involving independent practitioners in other parts of the country is continuing.

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